

DATE: November 8, 2022

SUBJECT:

..Title

PROPOSED SEAPORT REDEVELOPMENT - SEAPORT SAN DIEGO PROJECT:

- A) RECEIVE A PRELIMINARY PROJECT REVIEW PRESENTATION; AND**
- B) ADOPT A RESOLUTION AUTHORIZING STAFF TO COMMENCE ENVIRONMENTAL REVIEW IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND THE NATIONAL ENVIRONMENTAL POLICY ACT, IF APPLICABLE, FOR THE PROPOSED SEAPORT SAN DIEGO PROJECT**

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EXECUTIVE SUMMARY:

On February 22, 2016, the District issued Request for Proposals 16-04ME (RFP)¹ for the redevelopment of 70 acres of land and water situated between downtown and the Bay in the District's Central Embarcadero area (RFP Redevelopment Site). The RFP Redevelopment Site is bordered by the USS Midway Museum and Harbor Drive to the north, Manchester Grand Hyatt and Kettner Boulevard to the east, and San Diego Bay to the south and west. The RFP Redevelopment Site also includes Embarcadero Marina Park North, Ruocco Park and Tuna Harbor, but excludes the Fish Market leasehold. A location map is attached for reference (Attachment A – Location Map).

Following an extensive solicitation and due diligence process, at the November 8, 2016 meeting, the Board of Port Commissioners (Board) selected a developer team as the successful proposer. On October 2, 2017, the District entered into an Exclusive Negotiating Agreement (Original ENA) with Protea Waterfront Development, LLC, (Protea) the managing member of 1HWY1, LLC (1HWY1), and Protea later assigned its rights and obligations under the Original ENA to 1HWY1 when 1HWY1 was formed. Under the Original ENA, the negotiating period was set to expire on October 1, 2019. However, in accordance with the Original ENA and at the request of 1HWY1, the District has granted extensions to 1HWY1 for delivery of its submittal requirements under the Original ENA and extended the negotiating period under the ENA. In December 2020, the District and 1HWY1 entered into an amendment to the Original ENA (Amendment No. 1) to extend the negotiating period to October 1, 2024 (Attachment B – ENA Amendment No. 1). The Original ENA, as amended by Amendment No. 1, is referred to herein as the "ENA". Pursuant to Section 6.1 of the ENA, 1HWY1 has delivered to the District certain submittals for the proposed Seaport San Diego project (Seaport San Diego Project or Project).

At the July 21, 2022 Board meeting, staff and 1HWY1 presented updates on the draft preliminary Project description (the proposed draft "Project Description") to the Board based on feedback received from the Board and stakeholders at the March 8, 2022 Board meeting. Staff has continued to work with 1HWY1 over the past several months on revisions to the Project Description. 1HWY1 submitted a revised draft project description on October 21, 2022 (October 2022 Draft Project Description) that includes many

revisions to the previous versions of the Project Description in response to the feedback from the Board and stakeholders. Some of the main proposed revisions to the Project Description since the July Board meeting include:

- Reduction of slips in Zone 2 (water area west of G Street Mole) and Zone 4 (water area south of Tuna Harbor/Market Pier);
- Setback for water improvements from the navigation channel increased to 210 feet;
- Removal of restaurant on third level of commercial fishing building;
- Commercial fishing building footprint increased over 80% from 165 feet to 300 feet long;
- Reconfigured Market Pier for better navigation into Tuna Harbor; and
- Reconfigured fixed pier on G Street Mole, which is now limited to only commercial fishing uses.

At the November 8, 2022 Board meeting, staff, along with 1HWY1, will present the October 2022 Draft Project Description for the Seaport San Diego Project for preliminary project review. As part of this preliminary project review, the Board may provide feedback on the October 2022 Draft Project Description, including without limitation, relating to the architecture, public realm components, connectivity, scale and any other considerations concerning the Board's vision for the Project.

In addition to feedback on the Project, staff will also be seeking authorization from the Board to commence California Environmental Quality Act (CEQA) environmental review for the Project and potentially National Environmental Policy Act (NEPA) review for the portions of the Project that require federal approval. At the November Board meeting, the Board will not be approving the Project, the design, the October 2022 Draft Project Description, a Lease, any financing for the Project or any approvals necessary to carry out the Project. Any feedback provided by the Board on the Project will not be binding on the District, and the Board, in authorizing commencement of environmental review and providing feedback, reserves its sole and absolute discretion to approve, disapprove or condition any project within the RFP Redevelopment Site, including the Project, and adopt all feasible mitigation measures, a project alternative, including the No Project Alternative, the Least Environmentally Damaging Practicable Alternative, and a Statement of Overriding Considerations, if applicable, and any other approvals necessary to carry out the Project. Further, the District is not committing to fund all or any portion of the Project.

RECOMMENDATION:

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Proposed Seaport Redevelopment– Seaport San Diego Project:

- A) Receive a Preliminary Project Review Presentation; and
- B) Adopt a Resolution Authorizing Staff to Commence Environmental Review in Accordance with the California Environmental Quality Act and National Environmental Policy Act, if Applicable, for the Proposed Seaport San Diego Project.

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FISCAL IMPACT:

Preliminary project review and authorization from the Board to commence environmental review will not have a direct fiscal impact to the District. 1HWY1, as the “Developer” under the ENA, is responsible for costs and fees expended by 1HWY1 as part of its due diligence efforts, including without limitation, all processing fees and costs associated with application for, and processing of, the environmental review. The proposed Project is expected to generate future revenues for the District which are currently being evaluated by staff as part of the due diligence process including whether any public financing will be provided by the District for the Project, infrastructure, or utilities associated with the Project. If 1HWY1 requests an extension that goes beyond October 1, 2024, the District has the option to collect a non-refundable extension fee in an amount to be determined at that time.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Background

At the July 21, 2022 Board meeting, staff and 1HWY1 presented updates on the proposed draft Project Description for the Seaport San Diego Project. During the open session meeting, there was public comment on the Project and the Board provided feedback to staff and 1HWY1. Staff has since been working with 1HWY1 on additional revisions to the Project Description as well as continuing to work on the project financials and feasibility. 1HWY1 provided a revised draft Project Description to the District on October 21, 2022. The October 2022 Draft Project Description includes many changes to the Project that address comments and concerns from the Board and stakeholders since the Project Description was originally submitted in December 2021.

In addition to the Board meetings on March 8, 2022 and July 21, 2022, the 1HWY1 team along with District staff have been meeting with the San Diego Fishermen’s Working Group (SDFWG) frequently to help resolve their concerns so that the Project will enhance commercial fishing on the waterfront. Representatives of the SDFWG have spent a considerable amount of time away from active fishing in order to meet with the 1HWY1 team and District staff to provide input on the details of their operations, as well as educate the 1HWY1 team on important aspects of the commercial fishing industry. These representatives have consistently participated in meetings specific to the Project since 1HWY1 was selected for the RFP in 2016. 1HWY1’s October 2022 Draft Project Description includes many changes that directly address comments from the SDFWG.

Draft Project Description Revisions

The revised Draft Project Description submitted by 1HWY1 includes many changes to the Project to address comments from the Board and stakeholders. The majority of the revisions focus on the waterside development and commercial fishing as most comments at the July Board meeting were focused on those two categories. Below is a list of the key changes to the revised Draft Project Description since the July 2022 Board meeting.

Waterside Development

- Zone 2 (water area west of G Street Mole) of the Project has been reduced from 38 slips to 8 slips and is now entirely dedicated to commercial fishing.
- Zone 4 (water area south of Tuna Harbor/Market Pier) has been reduced by 66% from 103 slips to 35 slips.
- The setback for water improvements from the navigation channel has increased from 164 feet to 210 feet.

Commercial Fishing

- The proposed restaurant on the third level of the fish processing building has been removed and the space has been reassigned to office uses for commercial fishing.
- The proposed retail on the north end of G Street Mole has been removed.
- Access to G Street Mole has been updated from 3 to 4 lanes with protected right turns to align with the signalized intersection improvements that will be installed as part of the RaDD project on the east side of Harbor Drive.
- Vehicular circulation on G Street Mole has been confirmed to be adequate for large trucks to maneuver through the site.
- The fishermen parking has been updated to have a dedicated parking zone with oversized parking spaces, 24-hour secure access and barrier to the public.
- The fish processing building footprint has increased over 80% from 165 feet long to 300 feet long per the request of SDFWG based on their USDA architect's plan.
- Fixed pier on the west side of G Street Mole (Zone 2) has been reconfigured to address vessel maneuverability needs and is now restricted to fishing operations, including net mending, offloading, maintenance and truck access.
- Tuna Harbor slip configuration (Zone 3), as well as the extension of Market Pier, has been modified to address vessel maneuvering and navigation needs.
- Lastly, the offloading pier on the south side of G Street Mole has been widened by 65% from 30 feet to 50 feet to allow vessels the ability to side-tie.

The Project program has been revised over time as 1HWY1 conducts due diligence and feedback is received from the Board and stakeholders. The main changes to the Project program since the December 2021 submission of the draft project description include reduction of the blue tech innovation center from 309,000 square feet to 220,000 square feet, reduction in dock space from 28,490 linear feet to 11,845 linear feet, reduction in slips from 355 slips to 158 slips, and lastly increase in the commercial fishing building from 22,019 to 35,001 square feet. For a summary of the Project program changes since

the original submittal to the RFP to the most recent submittal of the Draft Project Description, see Attachment D – Project Program Comparison Chart.

Ruocco Park Relocation

The Project proposes relocation of Ruocco Park. On November 10, 2009, the District and the San Diego Foundation (Foundation) entered into a Donation Agreement for the Development of Ruocco Park (Donation Agreement) (District Document No. 54151) whereby the Foundation donated \$3.5 million towards the design, construction and maintenance of Ruocco Park. The term of the Donation Agreement is sixty-six years. Section 16 of the Donation Agreement provides that if Ruocco Park is relocated during the term of the agreement, it shall be relocated to a site of comparable size and downtown location oriented to the waterfront and retain the name of Ruocco Park. (Donation Agreement, Section 16.) Further, the relocation site must either be approved by the Foundation or if is disapproved by the Foundation, the District must refund any monies that have been donated for Ruocco Park by the Foundation. (Donation Agreement, Section 16.) If the relocation site is approved by the Foundation, the District has the obligation to pay for design and construction of the relocated park at a cost not less than the amount previously expended by the Foundation and the District. (Donation Agreement, Section 16.) However, the Donation Agreement does not prohibit relocation of Ruocco Park and by commencing environmental review for the proposed Project, the District has not committed to relocation of Ruocco Park. Hence, Section 16 of the Donation Agreement has not been triggered.

October 2022 Draft Project Description Compliance with ENA

The ENA requires 1HWY1 to meet various criteria in the draft Project Description prior to the commencement of environmental review. The October 2022 Draft Project Description was evaluated for completeness against the various criteria in Section 6 and 6.1 of the ENA and found to be sufficient for commencing environmental review. At 1HWY1's request, and as contemplated by the ENA, on October 27, 2022, the District Executive Director provided a conditional modification to certain ENA criteria in Sections 6 and 6.1 of the ENA. This decision was to provide additional time for 1HWY1 to submit certain items that are required under the ENA, but are not considered essential to commence environmental review. 1HWY1 is still required to provide the criteria to the District either prior to preparation of the CEQA Notice of Preparation or prior to the preparation of the Draft EIR, as noted on the October 27 ENA conditional modification, attached as Attachment E.

Assembly Bill (AB) 900 – Jobs and Economic Improvement through Environmental Leadership Act (2011)

The Applicant has informally requested to process of the Project and EIR under the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 (Environmental Leadership Act), codified in CEQA (Cal. Public Resources Code §§ 21178-21189.3). The Environmental Leadership Act provides streamlining benefits to certain qualified projects under CEQA known as “environmental leadership development projects” (individually, ELDP). Relevant here, for the Project to be eligible as an ELDP, it

must (a) be certified as Leadership in Energy and Environmental Design (LEED) gold or better by the United States Green Building Council; (b) where applicable, achieve a 15-percent greater standard for transportation efficiency than for comparable projects; and (c) be located on an infill site. (Cal. Public Resource Code § 21180.) Additionally, for a project that is within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect, the infill project shall be consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board has accepted a metropolitan planning organization's determination, that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets. (Cal. Public Resource Code § 21180.) Additionally, to be a ELDP, the Governor must certify, among other items, that the Project (i) includes an investment of one hundred million dollars (\$100,000,000); (ii) creates high-wage, highly skilled jobs that pay prevailing wages and living wages, provides construction jobs and permanent jobs for Californians, helps reduce unemployment, and promotes apprenticeship training; and (iii) does not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation. (Cal. Public Resource Code § 21183.) A ELDP requires that the District, as the CEQA lead agency, to prepare the administrative record while the CEQA process is on-going and post the record to its website, as well as issue certain notices. (Cal. Public Resource Code §§ 21186, 21187.)

1HWY1 intends to submit an application to the Governor for certification of the Project as eligible under the Act (see Cal. Public Resources Code §21180(b)(1)). Such certification must be obtained by the Governor before January 1, 2024. District approval of the Project, as lead agency under CEQA, is required before January 1, 2025 for the Project to get the benefit of the Environmental Leadership Act's streamlining, but nothing in the Act requires the District to certify the EIR and approve the Project by that date. (Cal. Public Resources Code §§ 21181, 21189.1.) The Environmental Leadership Act expires by its own terms on January 1, 2026.

Conclusion

1HWY1 is committed to working with stakeholders, responding to feedback from the Board and continuing due diligence as the Project continues to progress through the entitlement process. 1HWY1's revised draft Project Description submittal includes many revisions to the Project that address the feedback from the Board and stakeholders since the original submission of the Project Description in December of 2021. The Board has the authority, in its sole and absolute discretion, to direct staff to proceed with environmental review, and if so directed, the Board's approval of such environmental review is a condition precedent to the Board's consideration of the Definitive Agreement (as defined in the ENA).

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda sheet and attachments, as presented to it, and approves it as to form and legality.

Environmental Review:

The preliminary project review presentation regarding, including without limitation, the proposed Project Description and seeking Board authorization to staff to commence environmental review, is consistent with and in conformance with CEQA Guidelines Section 150605, which authorizes a lead agency to conduct a preliminary review of an application for permits or other entitlements for use before commencing formal environmental evaluation of a project. Any project, including the Project, requiring the District or the Board's discretionary approval resulting in a physical change to the environment shall be analyzed in accordance with CEQA prior to such approval.

The Board is not approving the Project, the design, the October 2022 Draft Project Description, any public financing for the Project, any leases or any other approvals required to carry forward the Project. The Board reserves its sole and absolute discretion to approve or disapprove any project within the RFP Redevelopment Site, including the Project, and adopt all feasible mitigation measures, a project alternative, including the CEQA No Project Alternative, a NEPA Least Environmentally Damaging Practicable Alternative, and a Statement of Overriding Considerations, if applicable, as well as any and all other permits or entitlements for use that may be required. Therefore, no further CEQA review is required for the Board's action with respect to this preliminary project review presentation.

The presentation complies with Section 35 of the Port Act, which authorizes the Board to do acts necessary and convenient for the exercise of its power. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the presentation is consistent with the Public Trust Doctrine.

A Port Master Plan Amendment will be required for the Project and will be studied as part of the CEQA analysis and presented to the Board for its consideration after certification of the EIR. Additionally, the presentation and authorization to commence CEQA does not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a CDP or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development would remain subject to its own independent review pursuant to the District's certified CDP Regulations, Port Master Plan (PMP), and Chapters 3 and 8 of the Coastal Act. The exercise of the District's discretion under the District's CDP Regulations is in no way limited by this presentation.

Diversity, Equity, and Inclusion Program:

This agenda sheet had no direct impact on District workforce or contracting reporting at this time.

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Attachment(s):

Attachment A:	Location Map
Attachment B:	1HWY1 Exclusive Negotiating Agreement
Attachment C:	October 2022 Draft Project Description
Attachment D:	Project Program Comparison Chart
Attachment E:	October 27 Conditional ENA Modification